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IN THE

Supreme Court of the United States

October Term, 1962

No. 980

FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION EAL CHAPTER, AFL-CIO,
Petitioner,

v.

EASTERN AIR LINES, INC. and AIR LINE PILOTS ASSOCIATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, IN OPPOSITION

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Opinions Below

The opinion of the Court below is reported at 311 F. 2d 745. The opinion of the District Court is unofficially reported at 51 LRRM 2105.

Question Presented

Petitioner sought a preliminary injunction to restrain Respondent, Eastern Air Lines, Inc. (Eastern) and Air Line Pilots Association, International (ALPA) from giving effect

to agreements between them of November 12, 1958, January 1, 1959, August 3, 1962 and two other agreements associated with the latter. A preliminary injunction was also sought by Petitioner to require Eastern to deal exclusively with it respecting the combined pilot-engineer job and to exclude ALPA therefrom. The District Court denied the preliminary injunction, finding the presence of good faith bargaining and the absence of any alleged unlawful conspiracy and held such agreements to be valid. The Court of Appeals affirmed the denial of the preliminary injunction, concluded that the nature of the action was one turning about rival jurisdictional claims, the assertion of representation being doubtful, and found an absence of jurisdiction. The question presented is whether the denial of such preliminary injunction and the affirmance of such order was proper.

Statement

Petitioner sought preliminarily to enjoin ALPA and Eastern from giving effect to agreements between them of November 12, 1958, January 1, 1959 and August 3, 1962. It sought also to require Eastern to deal exclusively with it concerning the terms of employment of those serving as pilot-engineers and to exclude ALPA from any participation therein.

With the advent of jet aircraft, disputes arose between Eastern, ALPA and Petitioner, FEIA, EAL Chapter, respecting the qualifications of the third crew member. Presidential Emergency Boards pursuant to Section 10 of the Railway Labor Act were constituted in each of such disputes, the composition of the Boards being identical and the evidence received from FEIA, ALPA and Eastern on the common question of crew complement and qualification of

the third crew member was considered together by the Boards. The reports rendered by the Presidential Emergency Boards in July, 1958, identical on the matter of crew complement and qualifications, found safe and efficient operation of jet equipment to require pilot training and qualification for the third crew member, who was also to have a flight engineer's certificate. These Recommendations were accepted by Eastern and ALPA but rejected by Petitioner, which was unwilling to accept pilot training for its flight engineer members.

Petitioner's assertions (p. 4, *et seq.*) that in 1958 ALPA was attempting to appropriate the flight engineers' jobs and the bargaining rights of EAL Chapter, are not in accord with the facts of record. ALPA's position prior to and in the Presidential Emergency Board proceedings vouchsafed to the engineers their job rights and representation. The recommendations of the Presidential Emergency Board, rejected by EAL Chapter, did likewise.

On November 12, 1958, an agreement was reached between Eastern and ALPA under the auspices of the National Mediation Board, reflecting the requirement that there shall be three pilot-qualified persons in the cockpit. There was yet unresolved the dispute between Petitioner and Eastern regarding the flight engineers' unwillingness to accept pilot training. Essentially over this issue the flight engineers, represented by Petitioner, struck and shut the airline down for 39 days. The engineers were successful in resisting the acceptance of pilot training and qualifications and accordingly, concluded an agreement on December 31, 1958. On January 1, 1959, Eastern and ALPA concluded a contract which reflected their prior agreement and satisfied the Presidential Emergency Board recommendations for the need of additional piloting skills in the jet cockpit by pro-

viding for a third pilot in light of the engineers' refusal to accept such training.

Like agreements were made between ALPA and American Airlines, Inc. in January of 1959, with Pan American World Airways, Inc. in February of 1959, with United Air Lines in May of 1959, with Trans World Airlines in May of 1959, and with Northwest Airlines in August, 1959. A pattern was established in the industry which in fact implemented the Eastern Emergency Board recommendation that additional piloting skill was needed in the jet cockpit and ALPA's crew complement policy to the same effect. As did the Petitioner, Petitioner's affiliate FEIA Chapters on Pan American, Trans World and American, succeeded in bargaining for the continued position of the flight engineer without pilot qualifications in the jet cockpits of such carriers. The crew complement agreements between such carriers and ALPA did not preclude such eventuality on these or any other carriers having comparable agreements.

One of the basic assertions of Petitioner in this proceeding is that Eastern and ALPA conspired to defeat Petitioner's rights in the making of the challenged agreements. This would involve the demonstration, absent in the record, of virtually an industry-wide conspiracy in this matter, including several Presidential Emergency Boards and the President's Commission on the Airlines Controversy.

On United Airlines the National Mediation Board, acting through a Committee of Neutrals, made a determination on crew complement which recognized the rapid technological developments in the aviation industry and the basic concept of crew coordination in which each member of the cockpit complemented the skills and functions of the other and could relieve the other. 3 *Determination of Craft or Class of the National Mediation Board*, p. 56; 67 (1961).

The President's Commission on the Airlines Controversy was established by Executive Order 10921 in February, 1961. Involved in these proceedings were several trunk carriers, including Eastern, operating jet aircraft with a four-man crew.

The President's Commission in its Reports of May and October, 1961, affirmed that jet equipment be operated by a three-man crew, the third member to be pilot-qualified as well as having an engineer's certificate.

An Arbitration Board, appointed at the instance of the President of the United States, consisting of Dr. George Taylor, George Meany and Edgar Kaiser, concluded that the third crew member in a three-man jet crew "involves the combination into one job of the essential tasks now performed by a third pilot and a flight engineer". *National Mediation Board Arbitration No. 271*, May 21, 1962, Air Line Pilots Association, International with Pan American World Airways.

Other carriers not involved in these Commission or Arbitration proceedings but also operating jet equipment had, in the first instance with the addition of the third man, required that he be pilot as well as engineer-qualified. On such carriers, as Braniff and Delta, the recognition of "the combination into one job" has always existed, the third crew member having a flight engineer's certificate being pilot qualified and all flight deck crew members represented as one craft under a single agreement between the carrier and ALPA. Indeed, in the only instance in which the issue was raised and determined whether flight engineers constitute a separate craft as among flight deck employees, there resulted a determination by the National Mediation Board in the *United* proceeding that they are part of a single craft consisting of all members of the cockpit.

In negotiations current between them, Eastern had proposed the implementation of a reduction from four to three crew members in the jet cockpit in accordance with the Report of the President's Commission on the Airlines Controversy. The acceptance of this Report had also been recommended to Eastern and Petitioner by a Presidential Emergency Board established in connection with the then current dispute between Eastern and Petitioner. Petitioner's refusal to accept the proposal and to implement these recommendations was accompanied by a strike of the flight engineers commencing on June 23, 1962.

In its letter of July 19, 1962, Eastern advised ALPA of its intention to reduce from a four to a three man jet crew, utilizing "a Pilot-Engineer" whose "duties will be a combination of the present Flight Engineer duties and Third Pilot Duties performed in the Third Pilot's Position". The Company also called upon ALPA to perform its contractual obligations to accept the necessary training and fly the jet equipment under the agreement of January 1, 1959.

It has been elsewhere determined that Eastern was free to make the changes with respect to the third crew member's position and his training and qualifications, which it set about to do; it being likewise determined that Eastern was free to train and utilize the pilots for the third position. *Flight Engineers' International Association, Eastern Air Lines Chapter, AFL-CIO* v. *Eastern Air Lines, Inc.*, 208 F. Supp. 182 (S. D. N. Y.), aff'd 307 F. 2d 510 (2 Cir. 1962), cert. denied March 18, 1963 (October Term 1962, No. 776).

The agreement of August 3, 1962 (as well as those collateral to it) was noted by the District Court in its opinion reported at 51 LRRM 2105, and in the opinion of the Court of Appeals, 311 F. 2d 745, as being operative to protect the pilots' seniority and related rights. These rights by a pre-

vious and unchallenged agreement between Eastern and ALPA, had been established for such employees. These rights were being protected under the July and August, 1962 agreements while such personnel were functioning in the third crew member's position. The Company sought to use this source of qualified personnel and Petitioner did not question Eastern's right to take advantage of the "convenience of a readily accessible source of manpower" (Petitioner's Br. below, p. 26). Eastern, wishing to assure itself of the availability of such personnel could do so only by protecting them against loss of rights accruing under the pilots' agreement and ALPA, representing such persons, properly entered into such protective agreements.

Under the agreement of January 1, 1959, an obligation extended between ALPA and the Company for the operation of jet aircraft provided they were manned as prescribed in such agreement. Eastern made a point of noticing ALPA's obligation under the January 1, 1959 agreement when the equipment was manned as required.

When in the process of reducing from four to three Eastern became free to make changes, it did so by establishing a combined job. This consolidated the position of the third pilot and the flight engineer and established qualifications therefor. The agreements between ALPA and Eastern reflected the terms of such work assignment and qualifications.

Petitioner's assertion (p. 11, *et seq.*) that there was no consolidation of jobs is contrary to the facts established of record. Petitioner's reference in footnote 14, at page 11, to the provision of the agreement that the Company may cause returning flight engineers "to continue operating such pure-jet flights with a four-man crew" fails to disclose the qualifying language which immediately precedes. Such qualifying language of the agreement is that

> "3. During the period of transition from four-man pure-jet-crews to three-man pure-jet crews, the Company shall have the right to continue, * * * " etc. (Complaint, Exh. 6-A, p. 3)

Nor does this wrench of language out of context by Petitioner gainsay that Eastern was admittedly putting into effect the Report of the President's Commission on the Airlines Controversy which provided for reduction from four to three precisely by combining job functions and qualifications.

All of the parties, including Petitioner, have accepted the principle of a transition from four to three crew members on jet equipment. The carrier has bargained actively and over a lengthy period with both unions concerning the substance of such implementing agreements. Dissatisfaction by one of the contending groups with the outcome of collective bargaining is the essential nature of Petitioner's complaint.

ARGUMENT

Petitioner seeks review by this Court on the same grounds urged below. The decisions by the courts below are in accord with well-established rules of law; there are no conflicting applicable decisions and there is no occasion for review by this Court. The petition should therefore be denied.

(a) The District Court, upon consideration of the affidavits submitted in connection with the motion for a preliminary injunction, concluded that Eastern had "bargained in good faith," and that the claim of conspiracy between Eastern and ALPA for the unlawful defeasance of Petitioner's rights was not proved. The District Court likewise determined that the agreements of July 20, August 3 and

August 6, 1962 describe the protection to be received by pilot personnel while serving as flight engineers and the procedures for the training of such pilots for such service. *Flight Engineers' International Association, Eastern Air Lines Chapter, AFL-CIO* v. *Eastern Air Lines, Inc. and Air Line Pilots Association*, 51 LRRM 2105 (1962).

The Court of Appeals, noting that Eastern had negotiated a series of agreements with ALPA which regulated the retention of the pilots' seniority, their compensation and terms of employment while serving as pilot-engineers, proceeded to deal with the essential nature of Petitioner's complaint. The Court of Appeals evidently regarded Petitioner's entire position as permeated with the issue of rival claims over work assignment and jurisdiction, without which none of Petitioner's claims or assertions has meaning or substance. The rival claims with respect to the "pilot-engineer job" make directly applicable *General Committee* v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323 (1943). Therein the Supreme Court held that the solution of such disputes was not within the jurisdiction of the federal courts.

The Petitioner makes certain factual claims, particularly on page 19 of its petition, which are not supported by the record and concerning which contrary determinations were made by the Courts below. Its assertion that the flight engineers might return with the job unchanged, is a repetition of its prior erroneous claim, based upon the use of language of the August 3, 1962 agreement taken out of context. This has heretofore been dealt with. It is clear that there was in fact a combination of jobs and qualifications effected by Eastern. It has elsewhere been made clear that Petitioner does not challenge the right of Eastern to accomplish such changes. Petitioner contends further that the flight engineers and the pilots are trained to perform distinct functions.

It neglects to consider that it was the combination of these functions and coalescence of training and qualifications which has given rise to what is in fact Petitioner's basic complaint over work assignment. It was in the instance of a contest over work assignment that this Court found in *General Committee* v. *M.-K.-T.*, *supra*, the absence of a basis for judicial intervention.

Petitioner misconceives the effect of its certification by the National Mediation Board. The National Mediation Board, charged with administration of the Railway Labor Act and the determination of certification upon which Petitioner relies, made clear the limitations upon certification, stating as follows:

> "A certification by this Board to an organization gives that organization the right to bargain for the employees in the craft or class. It does not in itself, however, give the employees of that craft the right to exclusive performance of certain work. That becomes a matter for collective bargaining." In *Matter of Representation of Employees of the American Airlines, Inc.—Technical Foremen*, 3 *Determination of Craft or Class of the National Mediation Board*, page 53 (1959).

The National Mediation Board has recognized the function of management in establishing new or combined jobs reflecting changing technology whereunder it becomes necessary to draw upon established craft groupings for qualified personnel. Carriers have had to make choices at times between two established groups, the personnel of each of whom may have a part of the qualifications needed for the combined job to be established. The opportunity to exercise such choice has been uniformly accepted and as such was taken into account by the Board in subsequent representa-

tion proceedings. *Matter of Representation of the Employees of American Airlines, Inc.—Reservisor Technicians, 2 Determination of Craft or Class of the National Mediation Board,* page 3 (1953).

Petitioner's complaint at page 20 and following, that it is left without remedy, misconceives the decision of this Court in *General Committee* v. *M.-K.-T.*, *supra*, and *General Committee* v. *Southern Pacific Co.*, 320 U. S. 348 (1943). In the instant case there are rival claims as to a work assignment, a combining of jobs and qualifications which has been legally effected, giving rise to secondary effects, including doubt as to representation. Representation problems may properly and exclusively be referred to the National Mediation Board. This Court in the *M.-K.-T.* case noted that situations may arise under the Railway Labor Act

> "where neither the administrator nor the judicial function can be utilized."

The National Mediation Board has consistently with this determination held that the effect of its certification does not give

> "a right to exclusive performance of certain work. That becomes a matter for collective bargaining."

(b) Petitioner claims that the decision of the Court below conflicts with the decision of this Court in *Brotherhood of Railroad Trainmen* v. *Howard*, 346 U. S. 768 (1951), and decisions of other Courts of Appeals. The decision in the *Howard* case is quite inapposite. That case concerned with the discriminatory exclusion of negro workers, did not involve the instant considerations of the combination of two jobs into one, rival claims over the combined job and consequential representation problems.

Likewise, Petitioner's reliance upon *Brotherhood of Railroad Trainmen* v. *Smith*, 251 F. 2d 282, cert. denied, 356 U. S. 937 (1938), as presenting a conflict is insubstantial. In the *Smith* case there was a complete absence of dispute over work assignment, jurisdictional issues or representation. Nor do the other cases cited by Petitioner present any conflict or need for resolution by this Court.

Reference by Petitioner to the Fifth Circuit Court of Appeals decision in *Railway Conductors* v. *Switchmen's Union*, 296 F. 2d 726, cert. denied, 361 U. S. (1959), as presenting a conflict is likewise not well grounded. No rival jurisdictional claims over work assignment nor combination of jobs or qualifications were factors in that case. The further references by Petitioner to cases involving enforcement of arbitration agreements seem to present no considerations relevant to this petition.

For the reasons stated herein the petition for writ of certiorari should be denied.

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